

Order

Michigan Supreme Court
Lansing, Michigan

April 29, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2013-26

Stephen J. Markman
Mary Beth Kelly

Proposed Amendments of Rule 7.209
of the Michigan Court Rules

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

On order of the Court, this is to advise that the Court is considering alternative proposed amendments of Rule 7.209 of the Michigan Court Rules. Before determining whether either of the alternative proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Alternative A: Would Require a Court to Enter an Order Staying
Enforcement on Appeal

Rule 7.209 Bond; Stay of Proceedings

(A)-(G) [Unchanged.]

(H) Stay of Execution.

- (1) If a court enters an order staying the effect or enforcement of a judgment or order during appeal and the stay order requires a bond to be filed with the court under subsection (E)(1), and if the bond is filed before execution issues, and notice is given to the officer having authority to issue execution, execution is stayed. If the bond is filed after the issuance but before execution, and notice is given to the officer holding it, execution is suspended.

(2)-(4)[Unchanged.]

(I) [Unchanged.]

Alternative B: Would Amend the Rule to Allow a Party to
Stay Proceedings Merely by Filing a Bond and Would Provide
an Opportunity for Objection by the Opposing Party

Rule 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

- (1) Except for an automatic stay pursuant to MCR 2.614, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2)-(3)[Unchanged.]

(B) Responsibility for Setting Amount of Bond in Trial Court.

- (1) Civil Actions. Unless determined by law, or except as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action must be set by the trial court in an amount adequate to protect the opposite party.

(2) [Unchanged.]

(C)-(D)[Unchanged.]

(E) Stay of Proceedings by Trial Court.

- (1) ~~Except as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires. Unless otherwise provided by rule, statute, or court order, an execution may not issue and proceedings may not be taken to enforce an order or judgment until expiration of the time for taking an appeal of right.~~
- (2) An appeal does not stay execution unless:

- (a) ~~When the stay is sought before an appeal is filed and a bond is required,~~ the party seeking the stay shall file a bond, with the party in whose favor the judgment or order was entered as the obligee, by which the party promises to
 - (i) perform and satisfy the judgment or order stayed if it is not set aside or reversed; and
 - (ii) prosecute to completion any appeal subsequently taken from the judgment or order stayed and perform and satisfy the judgment or order entered by the Court of Appeals or Supreme Court, or
- (b) ~~If a stay is sought after an appeal is filed, any bond must meet the requirements set forth in subrule 7.209(F).~~ The trial court grants a stay with or without bond as justice requires.
- (c) When the bond in subsection (E)(2)(a) is filed, the judgment or order shall automatically be stayed pending entry of a final order under subsection (G).

(2)-(4) [Renumbered as (3)-(5), but otherwise unchanged.]

(F) Conditions of ~~Appeal~~Stay Bond.

(1)-(2) [Unchanged.]

(G) Sureties and Filing of Bond; Notice of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court ~~which~~ that entered the order or judgment to be stayed.

(1) Civil Actions. ~~A bond in a civil action need not be approved by a court or clerk before filing but is subject to the objection procedure provided in MCR 3.604.~~

- (a) A copy of a bond and any accompanying power of attorney or affidavit must be promptly served on all parties in the manner prescribed in MCR 2.107. At the same time, the party seeking the stay shall file a proposed stay order pursuant to MCR 2.602(B)(3). Proof of service must be filed promptly with the trial court in which the bond has been filed.

- (b) Objections shall be filed and served within 7 days after service of the notice of bond. Objections to the amount of the bond are governed by MCR 2.602(B)(3). Objections to the surety are governed by MCR 3.604(E).
- (c) If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter the order staying enforcement of the judgment or order pending all appeals. Unless otherwise ordered, the stay shall continue until jurisdiction is again vested in the trial court or until further order of an appellate court.
- (d) Any stay order must be promptly served on all parties in the manner prescribed in MCR 2.107. Proof of service must be filed promptly with the trial court.
- (e) All hearings under this rule may be held by telephone conference as provided in MCR 2.402.
- (f) For good cause shown, the trial court may set the amount of the bond in a greater or lesser amount adequate to protect the interests of the parties.
- (g) A bond may be secured under MCL 600.2631.

(2) [Unchanged.]

(H)-(I) [Unchanged.]

Staff Comment: These alternative proposed amendments relate to stay bonds. MCR 7.209 is ambiguous whether filing a stay bond automatically stays enforcement proceedings, or whether a stay of proceedings is wholly within the discretion of the trial court and Court of Appeals. In this administrative file, the Court is publishing for comment two alternative proposals. Alternative A would clarify the rule so that it is clear that only a trial court judge or the Court of Appeals may order a stay of proceedings. Alternative B, modeled loosely on the recent revisions of the circuit court appeals rule (specifically MCR 7.108), would amend the rule to establish the principle that, like appeals to circuit court, filing a bond automatically stays further proceedings in a case, including enforcement of a judgment or order.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-26. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 29, 2015

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk